

AMENDMENTS TO THE DRAWINGS

Please replace the Figures of record with enclosed replacement sheets 1–6. The attached sheets of drawings include changes to Figure 4 and the addition of Figures 8 and 9. Figure 4 has been amended so that the entire forklift truck is depicted. Formerly, Figure 4 depicted only the counterweight **400** of the forklift truck. Next, Figure 8 is added to schematically depict an embodiment described by paragraph **[0048]** of the specification. Figure 9 is added to schematically depict an embodiment described by paragraph **[0049]** of the specification. Furthermore, a separate letter to the Official Draftsperson is submitted herewith.

REMARKS

Please reconsider the Application in view of the above amendments, the following remarks, and the Request for Continued Examination submitted concurrently herewith. Applicant thanks the Examiner for carefully considering this application and for the telephonic Interview held on April 4, 2006. In the final Office Action, the Examiner rejected claims 9 and 15 under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement. Next, the Examiner rejected claims 1-7, 9, and 11-15 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,637,706 (hereinafter “Kim”). Next, the Examiner rejected claims 1, 8, and 10 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,845,940 (hereinafter “Colburn”). Finally, the Examiner objected to the drawings for failing to show every feature of the invention specified in claims 2, 9, 11, and 15. In response, Applicant hereby amends the Application and respectfully traverses.

Interview Summary

Counsel for the Applicant held a telephonic interview with Examiner Sterling on April 4, 2006 during which claims 1-15 were discussed in light of the cited Kim and Colburn references. At the conclusion of the interview, it was agreed that claims would be amended to more clearly distinguish the invention from the cited art. Furthermore, it was agreed that a drawing amendment would be submitted to overcome the Examiner’s objections. The amendments submitted herewith are in accordance with that discussion. Further, Applicant respectfully submits a Request for Continued Examination herewith in order to re-open prosecution for the present Application.

Summary of Amendments

Claims 1 and 11 are amended to clarify that the cradle traverses an uninterrupted arcuate path between the retracted position and the extended position. Claim 9 is amended to more clearly claim a dampener between the frame and the cradle. New claims 22 and 23 are added to more thoroughly claim the invention as disclosed. Next, Figure 4 is amended to show the entire forklift truck and new Figures 8 and 9 are added to depict embodiments of the invention described in paragraphs [0048] and [0049] and claimed in claims 9, 15, 22, and 23. Finally, paragraphs [0030], [0048], and [0049] of the specification are amended and paragraphs [0027.1] and [0027.2] are added to accommodate changes made to the Figures. Applicant respectfully asserts that no new matter is added by these amendments and that no further search of the prior art is required.

Objections to the Drawings

The proposed drawing amendments submitted herewith address the Examiner's objection and are believed to place the Application in condition for allowance. Particularly, the Applicant hereby amends Figure 4 to more clearly depict the vehicle as a forklift. Furthermore, Applicant hereby adds Figure 8 to schematically depict a dampener (*i.e.*, a means for dampening) 800 as recited in claims 9 and 15 and as described in paragraph [0048].

Rejection under 35 U.S.C. §112, First paragraph

In the Office Action, the Examiner rejected claims 9 and 15 for not complying with the enablement requirement of 35 U.S.C. §112, First paragraph. In response, Applicant respectfully amends the Figures as described above. As such, added Figure 8 now schematically

depicts a damper (*i.e.*, a means for dampening) 800 connected between the frame and the cradle of the swing down tank bracket as described in paragraph [0048]. One of ordinary skill in the art would understand the schematic depiction and would be able to perform the invention as claimed without undue experimentation. Therefore, Applicant respectfully requests the Examiner withdraw the rejection under 35 U.S.C. §112 and allow claims 9 and 15 to issue.

Rejection under 35 U.S.C. §102(b)

In the Office Action, the Examiner rejected claims 1-7, 9, and 11-15 under 35 U.S.C. §102 as anticipated by Kim. Next, the Examiner rejected claims 1, 8, and 10 under 35 U.S.C. §102 as anticipated by Colburn. In response, Applicant requests independent claims 1 and 11 be amended as described herein. As such, the Applicant respectfully traverses the Examiner's rejection on the basis that neither Kim nor Colburn disclose all the limitations as claimed. The Federal Circuit has held that "[a]nticipation under 35 U.S.C. § 102 means lack of novelty, and is a question of fact. To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001) (emphasis added). Therefore, in order to properly reject claims 1 or 11 under 35 U.S.C. §102, either Kim or Colburn must include each and every element and limitation as arranged therein.

Particularly, with respect to claim 1 as amended, neither Kim nor Colburn disclose, suggest, or teach a swing down tank bracket wherein a cradle is rotatable between a retracted position and an extended position in a single stage such that the second end of the cradle traverses an uninterrupted arcuate path. As claims 2-10 properly depend from, and are

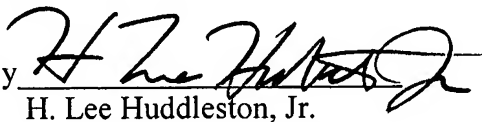
narrower in scope than independent claim 1, they are also not properly anticipated by either Kim or Colburn under 35 U.S.C. §102 for at least the same reasons.

Similarly, with respect to independent claim 11 as amended, Kim does not disclose, suggest, or teach a swing down tank bracket wherein a means for supporting a fuel tank is maneuvered between a retracted position and an extended position such that the means for supporting traverses an uninterrupted arcuate path. As claims 12-15 properly depend from, and are narrower in scope than independent claim 1, they are also not properly anticipated by Kim under 35 U.S.C. §102 for at least the same reasons

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0591, under Order No. 06078/231001 from which the undersigned is authorized to draw. Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below.

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Respectfully submitted,

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Attachments